IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1162 of 1999

in

SPECIAL CIVIL APPLICATION No 1986 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed : to see the judgements?

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy : of the judgement?

4. Whether this case involves a substantial question : of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :

DESAI NATHABHAI RATNABHAI
Versus
PATEL DAHYABHAI PITAMBARDAS

MR SK JHAVERI for Appellants
MR TUSHAR MEHTA for Respondents No. 1,4,6 & 8
MR HL JANI, AGP for the State

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE J.M.PANCHAL

Date of decision: 14/08/2000

C.A.V.JUDGMENT : (Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent Appeal, is directed against order dated August 9, 1999 rendered by the learned Single Judge in Special Civil Application No. 1986/99, by which operation of order passed by the State Government under section 48 of the Gujarat Agricultural Produce Markets Act, 1963 in revision reversing the Director's order, is stayed and respondents no.1 to 8 are allowed to continue to function as elected members of the Agricultural Produce Market Committee, Patan.

2. The respondents no.1 to 8 were elected as members of the Agricultural Produce Market Committee, Patan at the election held on July 21, 1998. The appellants and the respondent no.11 filed an application under Rule 28 of the Gujarat Agricultural Produce Market Rules, 1965 before the Director of Agriculture Marketing and Rural Finance, Gujarat State, Gandhinagar challenging the election of the respondents no.1 to 8. The main ground of challenge was that the members of Managing Committee of certain Co.operative Societies, which were dispensing agricultural credit in the market area, were not included in the voters list. The Director of Agriculture Marketing and Rural Finance, Gandhinagar by his order dated January 5, 1999 dismissed the election petition. Feeling aggrieved by the said order, the appellants and respondent no.11 preferred revision application before the State Government under section 48 of the Gujarat Agricultural Produce Markets Act, 1963. The State Government allowed the revision application by an order dated March 12, 1999 and set aside election of the respondents no.1 to 8. Therefore, they have filed Special Civil Application No. 1986/99 challenging the order of the State Government. The learned Single Judge before whom the petition was notified for admission hearing, has admitted the petition and granted interim relief referred to hereinabove, by the impugned order giving rise to present appeal.

3. Mr. S.K.Zaveri, learned counsel for the appellants submitted that the learned Single Judge committed error of law in entertaining the contention about maintainability of revision application and,

therefore,the impugned order should be set aside. According to the learned counsel, the learned Single Judge erred in proceeding on the basis that the Director had not upheld election on the basis of guidelines issued under Circular dated September 25, 1997 or Circular dated October 10, 1997 and, therefore, the appeal should be accepted. What was emphasised was that the learned Single Judge has virtually allowed the petition without adjudicating the claims raised in the petition on merits and such a relief should not have been granted on the facts and in the circumstances of the case. It was also pleaded that the learned Single Judge is not right in law in holding that a casual and isolated instance of an advance would not meet the requirement of dispensing agricultural credit and the interim relief granted on erroneous basis should be set aside. It was further argued that the normal principle that one whose election is set aside, should not be allowed to function without basic material infirmity in the impugned order is given go by and, therefore, the appeal should be allowed.

4. Mr. Tushar Mehta, learned counsel for the respondents no.1 to 8 contended that the learned Single Judge after noticing the controversy involved in the petition, has granted the interim relief in favour of the contesting respondents and the discretion exercised by the learned Single Judge should not be interfered with by the appellate court in this appeal. It was claimed that the respondents no.1 to 8 have a strong prima-facie case against the order passed by the State Government and as they were functioning after their election till the order was passed in revision by the State Government, the interim relief by which respondents no.1 to 8 are permitted to function as elected members of the Agricultural Produce Market Committee, Patan should be upheld.

5. We have heard the learned counsel for the parties and considered the documents forming part of the original petition. The question which is required to be decided by the Court in the petition pending before the learned Single Judge is whether the revision application filed by the appellants and the respondent no.11 was maintainable under section 48 of the Gujarat Agricultural Produce Markets Act, 1963. Another question which deserves consideration of the Court is as to the true interpretation of the phrase "dispensing agricultural credit in the market area" as appearing in section 11(1)(i) of the Act of 1963. In the light of the interpretation which may be put by the Court on the abovereferred to phrase, a further question will have to

be decided as to whether the electoral college for the elections in question had been properly constituted in accordance with the rules or not and whether certain names of the voters had been wrongly included in the voters list or certain names had been wrongly excluded from the voters list. From the impugned order, it is evident that the learned Single Judge has noted the controversy between the parties and in view of strong case made out by respondents no.1 to 8, has admitted the petition. The order further indicates that the learned Single Judge was conscious about the scope of interim relief to be granted by the court in a petition filed under Article 226 of the Constitution. What is observed by the learned Single Judge is that over and above Circular dated September 25, 1997 and Circular dated October 10, 1997, the Director had also taken into consideration the facts of the case before upholding the elections of respondents no.1 to 8. Therefore, it is not correct to say that the order impugned in the appeal proceeds on wrong assumption of facts. As observed by the Supreme Court in UNION OF INDIA v. ERA EDUCATION TRUST AND ANOTHER, (2000)5 SCC 57, the principles laid down for granting interim relief under Order 39 C.P.C. should be kept in mind by the High Court while hearing a petition under Article 226 of the Constitution and that interim order should not be issued as a matter of course. However, there is no absolute proposition of law that even in a deserving case, relief should be denied to the petitioner inspite of strong case on merits having been made out. Normally, a writ court would not grant relief at the admission stage to which a petitioner may be entitled to at the stage of final hearing. However, grant of relief depends upon facts of each case. In a given case, appropriate relief can always be granted when strong prima-facie case is made out and when the petition is likely to become infructuous. The learned Single Judge prima-facie was satisfied about the merit of the matter, which is quite evident from the elaborate reasons given by him. Moreover, the respondents no.1 to 8 were functioning after their elections till the order was made in the revision by the State Government. The present appellants and respondent no.11 were not declared elected and had, in fact, lost the election. Further the tenure of the elected body is short. Under the circumstances, direction issued by the learned Single Judge to stay the order passed by the State Government in revision cannot be said to be erroneous. Similarly, the direction given by the learned Single Judge to the effect that the respondents no.1 to 8 should be allowed to continue to function as elected members of the Agricultural Produce Market Committee, Patan also cannot be termed as

erroneous so as to warrant our interference in the present appeal. Though the learned Single Judge has indicated in the impugned order about controversy involved in the petition and strong prima-facie case made out by the respondents no.1 to 8 on merits, no opinion on merits is expressed. As the appeal is directed against interim order, we also do not think it proper to record findings on merits of the case. As we do not find any substance in the appeal, the appeal deserves to be dismissed summarily.

For the foregoing reasons, the appeal fails and is summarily dismissed.

(D.M.Dharmadhikari,CJ)

(J.M. Panchal, J.)

(patel)